Filed 12/15/08 The Aerospace Corp. v. Dunn CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE AEROSPACE CORPORATION, Plaintiff and Appellant, v. PETER DUNN, Defendant and Respondent.	B200088 (Los Angeles County Super. Ct. No. BC362915)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Reversed.

Quinn Emanuel Urquhart Oliver & Hedges, Scott B. Kidman and Shahin Rezvani for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Plaintiff filed a complaint for declaratory relief. The trial court initiated a motion for judgment on the pleadings (JOP) "on its own accord," granted its sua sponte motion, and denied declaratory relief. Plaintiff appeals. We reverse.

FACTS

The Parties' Relationship

The Aerospace Corporation operates a federally funded research and development center which provides scientific and engineering services for national defense-oriented space programs. Aerospace also performs research and development for commercial and non-defense uses. In 2002, Aerospace obtained a patent for something called "composite materials with embedded machines." Sometime thereafter, Aerospace devised a method to "insert" its patented composite materials into the heads of golf clubs. (The Golf Club Technology.) This milestone, in turn, augured the possibility of creating golf clubs that enabled a golfer to exercise more control over any golf ball to which he or she imparted a stroke.[1] In March 2005, Aerospace delivered a written letter agreement to Peter Dunn, authorizing him to represent Aerospace "in seeking out potential licensing opportunities" for the Golf Club Technology. (The Marketing Agreement.)

The Complaint for Declaratory Relief

On December 6, 2006, Aerospace filed a complaint against Dunn, alleging a single cause of action for declaratory relief. Aerospace's complaint alleged that an actual controversy existed between the parties based upon the following facts: "[Dunn] contends . . . the Marketing Agreement did not expire until December 31, 2005 and that he is entitled to compensation under the Marketing Agreement for licensing agreements for the Golf Club Technology entered into by Aerospace. Aerospace contends that the Marketing Agreement expired on June 30, 2005 and that, even if the Marketing

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[1] According to The Rules of Golf published by the United States Golf Association (USGA), "[t]he Game of Golf consists of playing a ball with a club from the *teeing ground* into the *hole* by a *stroke* or successive *strokes* in accordance with the *Rules* [of the USGA]." (USGA, The Rules of Golf (2007) section III, rule 1-1.) "A '*stroke*' is the forward movement of the club made with the intention of striking at and moving the ball . . . ." (*Id*., section II, Definitions.)

Agreement did not expire until December 31, 2005, [Dunn] is not entitled to any compensation under the Marketing Agreement because [Dunn] never procured any licensing opportunities for Aerospace and [because] Aerospace never entered into any licensing agreement[s] as a results of any . . . efforts of [Dunn]."

Service of Process and Default

On December 15, 2006, Aerospace personally served Dunn with a summons and complaint. On January 31, 2007, Aerospace served Dunn by mail with a copy of a Request for Entry of Default. On the same day, Aerospace filed a Request for Entry of Default, and the clerk of the trial court entered Dunn's default.

On February 14, 2007, Aerospace served Dunn by mail with a copy of a Request for Court Judgment. On March 8, 2007, Aerospace filed its Request for Court Judgment, along with a supporting case summary and declarations.[2]

The Trial Court's Sua Sponte Motion for JOP

On March 16, 2007, the trial court denied Aerospace's request for a judgment of declaratory relief, and, on its own, set a hearing on a motion for JOP pursuant to Code of Civil Procedure section 438, subdivision (b)(2). The court granted Aerospace an opportunity to file opposition.

On April 25, 2007, the trial court, over Aerospace's written opposition, granted its sua sponte motion for JOP. The trial court's minute order states: "[Aerospace] has failed to [allege] an actionable claim for declaratory relief. Here, the issue is one of breach of contract. In a declaratory relief claim, it is an issue of rights or duties under the contract."

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[2] The record shows that Aerospace mailed the Marketing Agreement to Dunn at an address identified as 5** S. Barrington Street, Los Angeles, CA 90049. The proof of service which Aerospace filed for the summons and complaint, however, states that Dunn was personally served at an address identified as 5** S. Barrington Street, Los Angeles 90025. The record also shows that all of Aerospace's subsequent default-related mailings to Dunn (e.g., its request for entry of default and its request for court judgment) were placed in envelopes labeled with a 90025 zip code. We express no conclusions regarding our zip code observations, except to say there appears to be something inaccurate.

In May 2007, Aerospace submitted a proposed judgment for the trial court's signature, but it was never signed by the trial court.

On June 19, 2007, Aerospace filed a notice of appeal from the "order granting [the] motion for judgment on the pleadings" which had been entered on "April 25, 2007."

On July 19, 2007, the trial court entered a minute order stating that it had received Aerospace's proposed judgment, and that the "document" was being "returned unsigned" because the court's minute order entered on April 25, 2007, was "the controlling order."[3]

DISCUSSION

Separate and independent from any discussion of whether the trial court properly acquired personal jurisdiction over Dunn (see footnote 2, *ante*), we agree with Aerospace that the JOP should be reversed.

> "A complaint for declaratory relief is legally sufficient if it [alleges] facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument . . . and requests that the rights and duties of the parties be adjudged by the court. (Code Civ. Proc., § 1060; *Maguire v. Hibernia Sav. and Loan Soc*. (1944) 23 Cal.2d 719 . . . .) If these requirements are met and no basis for declining declaratory relief appears, the court should declare the rights of the parties whether or not the facts alleged establish that the plaintiff is entitled to [a] favorable declaration." (*Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947 (*Wellenkamp*).)

Aerospace's cause of action for declaratory relief alleges that an actual controversy exists between the parties on this question: Did the Marketing Agreement expire on June 30, 2005, or December 31, 2005? No more is required to state a cause of action for declaratory relief. (*Wellenkamp*, *supra*, 21 Cal.3d at p. 947.) The possibility that declaratory relief may parallel and/or be cumulative to the parties' other rights —

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[3] Although an order granting a motion for judgment on the pleadings is not an appealable order, and the appeal must be taken from the ensuing judgment (*Neufeld v. State Bd. of Equalization* (2004) 124 Cal.App.4th 1471, 1476, fn. 4), we construe the court's minute order as a final judgment. (*Levy v. Skywalker Sound* (2003) 108 Cal.App.4th 753, 761-762, fn. 7.)

for example, as the trial court stated, a claim for breach of contract — is irrelevant. (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1565-1567.) As the statute states: ". . . [A party] may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. . . ." (Code of Civ. Proc., § 1060.)

DISPOSITION

The judgment is reversed. Each party to bear their own costs of appeal.

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BIGELOW, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.